

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GONZALO VALLES-RIVAS

Claimant

VS.

EXCEL CORPORATION

Self-Insured Respondent

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Docket No. 1,023,124

ORDER

Claimant requested review of the August 18, 2006 Award by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on November 28, 2006.

APPEARANCES

Chris A. Clements of Wichita, Kansas, appeared for the claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. In addition, the record includes the June 22, 2004, medical report from Dr. Terrence Pratt.

ISSUES

The parties designated March 31, 2005, as the appropriate date of accident for the series of mini-traumas that claimant sustained. In the August 18, 2006, Award, Judge Fuller found claimant sustained a 12 percent whole person functional impairment, which was the rating provided by Dr. Terrence Pratt. But the computation paragraph of the Award was mistakenly calculated based upon a 20 percent functional impairment. Consequently, the ALJ issued an Order Nunc Pro Tunc dated August 23, 2006, correcting the computation paragraph to reflect the appropriate calculations for a 12 percent whole person functional impairment.

Claimant contends Judge Fuller erred. Claimant argues that just because Dr. Pratt was the court ordered independent medical examiner does not mean that his opinion must be adopted. Claimant argues his medical expert witness, Dr. Pedro A. Murati, made

findings quite similar to Dr. Pratt and that the two opinions should be averaged to arrive at a 16 percent whole person functional impairment.

Conversely, the respondent argues that upon review of the entire evidentiary record, Dr. Pratt's opinion is more persuasive. Consequently, respondent requests the Board to affirm the ALJ's Award.

The only issue before the Board on this appeal is the extent of claimant's functional impairment as quantified by the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.).¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant has been employed by respondent since May 1993. He gradually developed bilateral shoulder pain while operating a saw in the chuck department. He also developed pain in his forearms with tingling and numbness in his hands and fingers. Claimant was provided pain medications and a soft wrist splint for his right wrist as well as work restrictions.

Claimant's attorney referred him to Dr. Murati who saw the claimant on July 21, 2005, and recommended additional treatment including a surgical evaluation if claimant failed to respond to conservative treatment. But claimant declined to pursue the treatment because he did not want surgery. Respondent accommodated claimant's restrictions and on August 2, 2005, placed him on the low temp belt picking fat. At the time of the regular hearing the claimant had been performing that job for approximately ten months and agreed that he had not been back to the nurse's station since he started that job.

The only issue that remains in this proceeding is how, in the opinion of a physician, the AMA Guides (4th ed.) rates claimant's permanent impairment. There is no claim for a permanent partial general disability greater than the functional impairment rating. Consequently, claimant's permanent functional impairment rating determines the amount of his permanent disability benefits.²

¹ At the time of the regular hearing, the claimant continued to work for respondent and he did not allege entitlement to a work disability (a permanent partial general disability greater than the functional impairment).

² See K.S.A. 44-510e.

Claimant testified about his ongoing symptoms in his back between his shoulder blades, his shoulders, forearms as well as numbness and tingling in his hands. And the record also includes the expert opinions of Drs. Terrence Pratt and Pedro A. Murati.

Dr. Murati examined claimant on July 21, 2005, at claimant's attorney's request. Claimant's complaint at that time was bilateral shoulder pain that radiated down both arms and tingling and numbness in both hands and fingers. After examining claimant the doctor diagnosed bilateral carpal tunnel syndrome, right ulnar cubital syndrome and myofascial pain syndrome affecting the bilateral shoulder girdles and thoracic paraspinals. Dr. Murati noted that claimant had a positive right carpal compression examination within five seconds and within ten seconds on the left. Ulnar compression was positive within five seconds. He also noted limited flexion and abduction of the bilateral shoulders. The doctor made treatment recommendations but, as previously noted, the claimant declined to pursue further treatment.

At claimant's attorney's request, Dr. Murati, on October 5, 2005 provided a rating for claimant based upon his previous examination of the claimant. Using the *AMA Guides* (4th ed.), Dr. Murati rated claimant's myofascial pain syndrome affecting the thoracic paraspinals using Thoracolumbar DRE Category II for a 5 percent whole person functional impairment. The doctor further rated claimant as having a 10 percent impairment to the right upper extremity due to carpal tunnel syndrome and 10 percent to the right upper extremity for right ulnar cubital tunnel syndrome which combine for a 19 percent right upper extremity impairment which the doctor converted to an 11 percent whole person impairment. The doctor rated claimant with a 10 percent impairment to the left upper extremity due to carpal tunnel which the doctor converted to a 6 percent whole person impairment. Finally, the doctor combined the whole person ratings for a 20 percent whole person functional impairment.

On the other hand, Dr. Pratt did not testify. But his February 6, 2006 medical report is part of the evidentiary record as the parties stipulated Dr. Pratt would examine claimant and the parties also agreed his rating would be considered as if it were a court-ordered independent medical evaluation.

Dr. Pratt diagnosed claimant as having repetitive trauma syndrome with bilateral shoulder and distal upper extremity involvement. Upon examination the doctor noted that Phalen's and Tinel's median nerve wrist and ulnar nerve elbow level were negative bilaterally. The doctor also noted the medical records reported claimant had very mild right carpal tunnel syndrome. In rendering that diagnosis, Dr. Pratt noted that July 2005 nerve conduction studies were reported to reveal very mild right carpal tunnel syndrome.

Dr. Pratt noted his examination was hindered by inconsistent responses from the claimant. Using the *AMA Guides* (4th ed.), the doctor wrote, in part:

The limitations in wrist range of motion were compared to Figure 26, page 3/36. He was symmetrical with flexion to 38 degrees which would result in a three percent (3%) impairment of the extremity. Extension to 55 degrees would result in between zero percent (0%) to two percent (2%) or one percent (1%) impairment of the extremity. Figure 29, page 3/38, radial deviation was within normal limits. Ulnar deviation to 22 or 20 degrees would result in a two percent (2%) impairment of the extremity. Total loss for range of motion on the right for wrist involvement six percent (6%) and left six percent (6%) of the extremity.

For his lateral pinch strength, I compared them to Table 33, page 3/65. He is right hand dominant. For an individual performing manual activities, the average should be 8.5, and he exceeds that on the right with an average exceeding 9 kg. On the minor hand, the average should be 7.7 kg. His average was 7.2 kg and that would only result in a strength loss index of six percent (6%), and that is not listed in Table 34, in terms of assessment for permanency.

For his bilateral shoulder involvement, he has parascapular as well as shoulder symptoms, which I considered after considering Table 18, page 3/58, and the relative value of the shoulder to result in a four percent (4%) impairment of the right and four percent (4%) of the left upper extremity. Again, there were limitations in terms of consistency.

Combining the involvement, he has a total of ten percent (10%) right and ten percent (10%) left upper extremity impairment which is equivalent to six percent (6%) of the whole person for the right and left upper extremity or combined for twelve percent (12%) impairment of the whole person.³

Finally, Dr. Pratt noted that the right ulnar nerve was assessed and negative according to the July 2005 electrodiagnostic study.

The claimant complains of bilateral shoulder, forearm and hand difficulties but determined that he did not wish to proceed with the recommended treatment. He was placed on a job to accommodate his restrictions and has not sought additional treatment after that change in job duties even though he continues to have pain complaints. Dr. Pratt examined the claimant after his change in job duties and some six months after claimant was examined by Dr. Murati.

The parties jointly selected Dr. Pratt to provide an unbiased evaluation of claimant's injuries. As indicated above, the Judge adopted Dr. Pratt's analysis and awarded claimant benefits for a 12 percent permanent partial general disability under K.S.A. 44-510e. The Board finds no persuasive reason to disturb that finding and adopts it as its own. Consequently, the August 18, 2006, Award as corrected by the August 23, 2006 Order Nunc Pro Tunc should be affirmed.

³ Pratt's IME filed Feb. 15, 2006, at 4-5.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated August 18, 2006, is affirmed.

The record does not contain a filed fee agreement between claimant and his attorney. K.S.A. 44-536(b) mandates that the written contract between the employee and the attorney be filed with the Director for review and approval. Should claimant's counsel desire a fee be approved in this matter, he must file and submit his written contract with claimant to the ALJ for approval.

IT IS SO ORDERED.

Dated this _____ day of December 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge